



CANADA'S LEGAL TEAM
L'ÉQUIPE JURIDIQUE DU CANADA

Demystifying Legislation: Drafting and Research

Part 1: Government-sponsored Legislation

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1. Introduction

- A behind-the-scenes look at how Government-sponsored legislation is prepared
- An introduction to the people who prepare it



1. Introduction

- Government-sponsored legislation: legislation introduced in Parliament by a representative of the executive branch (the “Government”)
- In a parliamentary democracy, the decision-makers of the executive branch are also members of the legislature
- For our purposes: the Government means Cabinet, supported by the non-partisan public service



1. Introduction

- Majority of legislation passed by Parliament is Government-sponsored legislation

– 2014:

- Government-sponsored statutes (23): **2,237 pages**
- Other statutes (13): **69 pages**

– 2015:

- Government-sponsored statutes (26): **1,003 pages**
- Other statutes (11): **61 pages**

– 2016:

- Government-sponsored statutes (14): **785 pages**
- Other statutes (0): **0 pages**



1. Introduction

- Useful resource:

Cabinet Directive on Law-Making, part of the Guide to Making Federal Acts and Regulations, 2nd ed.

www.pco.gc.ca/docs/information/publications/legislation/pdf-eng.pdf

Guide to Making Federal Acts and Regulations



2. Who We Are

- The Main Players in drafting the text of Government-sponsored bills:
 - Cabinet and Ministers' offices
 - Departmental Instructing Officers
 - Department of Justice (DOJ):
 - Legislative counsel
 - Bi-jural counsel
 - Other DOJ counsel – departmental or specialist
 - Jurilinguists
 - Legistic Revisors



2. Who We Are

- All Government-sponsored bills are prepared by DOJ
- All Government regulations are examined (and the vast majority are prepared) by DOJ
- DOJ's Legislative Services Branch is the group charged with preparing/examining legislative texts



2. Who We Are

- Legislative counsel (including regulations counsel):
 - Lawyers who transform Government policy into legislative text
 - provide legal advice on the wording and structuring to give legal effect to the policy
 - Manage legal risks with other DOJ counsel
 - “Guardians of the statute-book”
 - Functional specialists, but subject-matter generalists (exception: legislative counsel working on tax bills)

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2. Who We Are

- Bi-jural counsel:
 - expert counsel in comparative law – common law vs. civil law
 - review every bill to ensure it addresses common law in English and in French and civil law in English and in French
 - prepare the Federal Law – Civil Law Harmonization bills



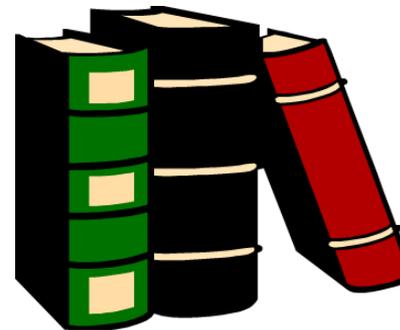
2. Who We Are

- Other DOJ counsel:
 - Counsel working in departmental legal service units (e.g., Public Safety Legal Services Unit)
 - Specialist counsel – *Charter* law, other constitutional law, Aboriginal law, commercial law, information and privacy law ...



2. Who We Are

- Jurilinguists:
 - ensure that highest possible quality of language used in legislation – style, terminology, phraseology
 - ensure that the English and French versions are parallel in meaning





2. Who We Are

- Legistic Revisors:
 - revise legislative texts
 - verify accuracy of text, including cross-references and historical notes
 - oversee printing of Government bills before introduction
 - publish the consolidated and annual statutes on the Laws Website

- (laws-lois.justice.gc.ca)





3. What We Do

- Transform policy into legislative text that is
 - bilingual
 - *Constitution Act, 1867*, s. 133; *Constitution Act, 1982*, s. 18(1)
 - bi-jural
 - DOJ's [*Policy on Legislative Bijuralism*](#)
 - consistent with established drafting standards
 - [*Drafting Conventions of the Uniform Law Conference of Canada*](#)

“The first obligation of a drafter is to be accurate; the second is to be clear; the third is to be concise.”

- R. Sullivan, *Sullivan on the Construction of Statutes*, 5th ed., at 203



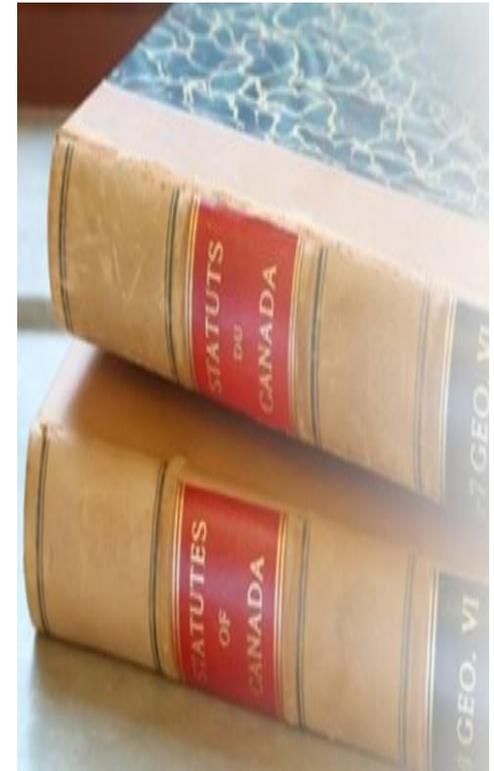
3. What We Do

- Legislation Section prepares
 - bills to enact new Acts (to be added to consolidated Acts)
 - bills to enact amending Acts (stay as annual statutes)
 - bills that are hybrid – amending Acts with embedded Acts
 - Government motions to be introduced during the parliamentary process



3. What We Do

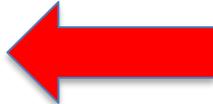
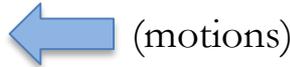
- Components of Legislation
 - Long title
 - Short title
 - Interpretation (definitions) and Application
 - Substantive Provisions
 - Offences
 - Regulation-enabling authorities
 - Consequential Amendments
 - Transitional Provisions
 - Coordinating Amendments
 - Commencement (Coming into Force) Provisions





3. What We Do

- Overview of the Legislative Process

1. Policy development
2. Presentation of policy to Cabinet
3. **Preparation of bill** 
4. Cabinet approval of bill
5. Consideration of bill in Parliament  (motions)
6. Royal assent and coming into force of Act



3. What We Do

- Overview of parliamentary process (example):

1. Introduction into House of Commons and First Reading

2. Second Reading

3. Committee Stage ← (motions)

4. Report Stage ← (motions)

5. Third Reading

6. First Reading in the Senate

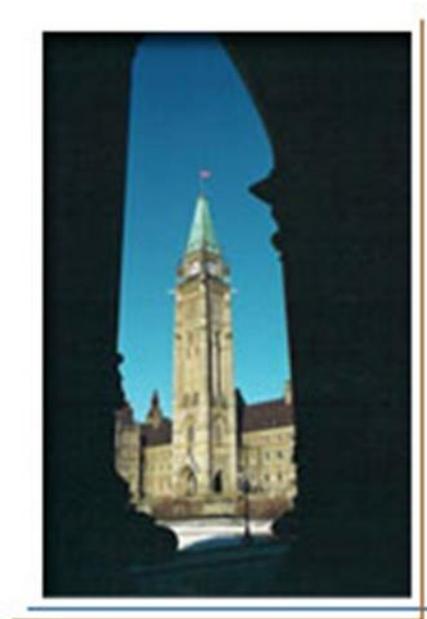
7. Second Reading

8. Committee Stage ← (motions)

9. Report Stage

10. Third Reading ← (motions)

11. Royal Assent





4. How We Do It

- *Co-drafting*, and not translating, since the 1980s
- Legislative counsel work in pairs – one drafting in English, one drafting in French
- Both receive the same instructions at the same time, and prepare their draft in light of the other version
- Bilingual legislation means better legislation



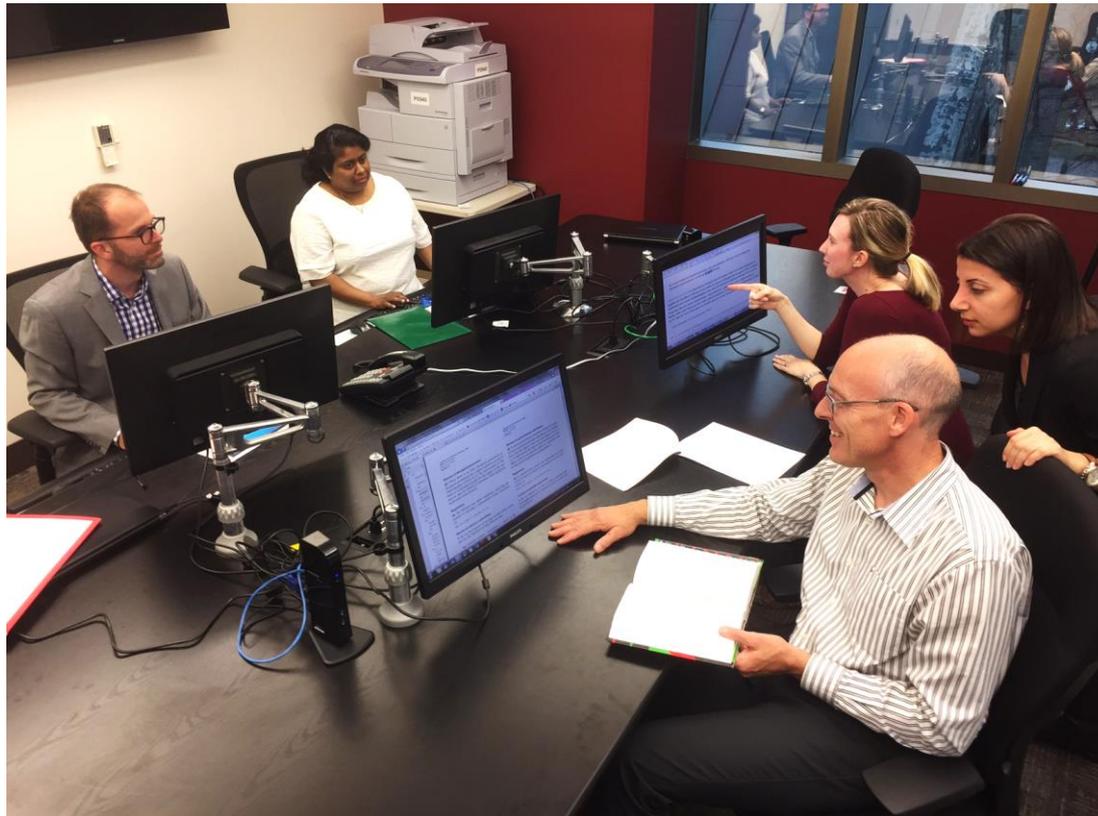
4. How We Do It

- The “Drafting Shuttle”

- the iterative process through which we meet in the *drafting room* with instructing officers and produce successive drafts of the bill
- Each draft incorporates the latest comments received from
 - instructing officers
 - other departmental officials
 - other departments
 - subject-matter experts
 - non-governmental stakeholders, if outside consultations were approved by Cabinet
- More detailed instructions often given in drafting room to supplement Cabinet’s instructions
- Questions on the meaning and scope of Cabinet’s instructions may arise



4. How We Do It – The Drafting Room





5. Conclusion

- All Government officials strive every day to make legislation as clear, coherent and transparent as possible
- We hope this presentation provides some idea of the processes the Government has put in place to achieve this goal
- Questions?